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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/329,487	06/10/99	KRISS	M 29284/35302

EXAMINER

TM31/1018

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ART UNIT

PAPER NUMBER

2163

DATE MAILED:

10/18/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**Office Action Summary**

Application No.

09/329,487

Applicant(s)

KRISS ET AL.

Examiner

Marc E. Norman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 September 2001.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-11, 13-16 and 22-49 is/are rejected.
- 7) ☒ Claim(s) 7, 8, 12 and 17-21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments filed 14 September 2001 have been fully considered but they are not persuasive.

Applicant disputes the Examiner's rejections of independent claims 1, 30, 39, and 43 and sets forth two sets of arguments. Each of these arguments is summarized and responded to below.

*1) The references applied by the Examiner do not recognize the problem solved by the invention (of a supplier not knowing what its customers are purchasing from other suppliers). Market share information, as taught by Geurts, contains no identification of the customers who purchase a supplier's product from other suppliers. Pindyck discloses economic models and forecasts but does not also does not disclose the problem solved by the invention of claims 1, 30, 39, and 43. Because neither of these publications address the problem solved by the invention, the invention of claim could not have been obvious over these publications.*

The Examiner submits that understanding the market share of one's competitors is a common and well-known interest of companies. See for example the Setchell et al. reference ("...it may be desirable to compare data relating to the products and services, markets, market share, geographical spread, and the like of one company in comparison with one or more competitor companies." Column 1, lines 8-12). Clearly, within a competitive market, there is a

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well understood motivation that any information regarding the sales of a competitor would be advantageous to a company. Further, as the Examiner discussed in the previous Office Action, the analytical problem solved by the present invention (of estimating the overall population of a first variable (competitor's sales) based on a sample representation (panelist data)) is simply a specific example of the more general problem of cross-sectional econometric forecasting as taught by Pindyck et al.

*2) Neither Geurts nor Pindyck discloses the particular solution provided by independent claims 1, 30, 39, and 43. The Examiner asserts that the particular solution recited in these claims involves well known techniques. However, the Examiner has not cited any references showing that these techniques are well-known. Moreover, even if the particular solution were well-known, the manner of putting them together as recited in these claims would not have been obvious without a consideration of the problem facing a supplier as stated above.*

The Examiner cited Pindyck et al. as teaching the well-known techniques of cross-sectional econometric forecasting using a single-equation regression. Examiner reasserts that the present invention is a specific application of these well-established econometric techniques. There is nothing inherently novel about estimating a variable based on panelist data. The motivation for applying these techniques in order to estimate the market share of one's competitors (i.e., the amount of purchases made by customers from other suppliers) would have been obvious for the reasons set forth in response to Applicant's first argument.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 9-12, 13-16, and 22-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geurts et al. and Pindyck et al.

In view of the above Response to Applicant's Arguments, the rejections of these claims as set forth in the previous Office Action (paper #4) are carried forward and maintained.

***Allowable Subject Matter***

Claims 7, 8, 12, and 17-21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

As per claims 7 and 12, the prior art does not teach or render obvious predictor variables including a total number of trips in which in which dollars were spent in a category.

Claim 8 would be allowable since it depends from claim 7.

As per claim 17, the prior art does not teach or render obvious dividing the panelists into buckets and determining the criterion variables as the number of panelists in each bucket.

As per claim 18, the prior art does not teach or render obvious creating new predictor variables based upon scoring rules.

Claims 19-21 would be allowable since they depend from claim 18.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Setchell et al. discusses the motivation for interest in competitors' sales data.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc E. Norman whose telephone number is 703-305-2711. The examiner can normally be reached on Mon.-Fri., 8:00-5:30, with first Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 703-305-9643. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

MN

September 27, 2001

TARIQ R. WAFIZ  
SUPERVISORY PATENT EXAMINER  
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